

CCASE:  
MSHA V. YOUGHIOGHENY & OHIO COAL  
DDATE:  
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TTEXT:  
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
WASHINGTON, D.C. 20006  
December 12, 1985  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

Docket No. LAKE 85-90

YOUGHIOGHENY & OHIO COAL  
COMPANY

#### ORDER

On December 4, 1985, the Commission granted a petition for discretionary review filed by the Youghioghenny & Ohio Coal Company ("Y&O") in this case. In the petition for review, Y&O challenged the administrative law judge's finding that a violation of 30 C.F.R. • 75.305 ("weekly examinations for hazardous conditions") was "significant and substantial" as that term is used in section 104(d)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. □ 814(d)(1) (1982). Y&O also challenged the judge's assessment of \$750 penalty for the violation of section 75.305, arguing that the penalty is excessive and that the judge failed to explain sufficiently the basis for his penalty assessment. In directing review of this case, we suspended the parties' briefing schedule.

Upon further consideration, we remand this proceeding so that the judge may enter the necessary findings as to each of the six statutory penalty criteria supporting his \$750 penalty assessment. 30 U.S.C. • 820(i). Cf. Sellersburg Stone Co., 5 FMSHRC 287 (March 1983), aff'd, 736 F.2d 1147 (7th Cir. 1984). Following the judge's supplemental decision on remand, Y&O may again seek Commission review on any issues as to which it remains aggrieved in accordance with the provisions of section 113 of the Mine Act. 30 U.S.C. 823.

~2014

#### Distribution

Robert C. Kota, Esq.  
Youghioghenny & Ohio Coal Company  
P.O. Box 1000  
St. Clairsville, Ohio 43950  
Ann Rosenthal, Esq.  
U.S. Department of Labor

Office of the Solicitor  
U.S. Department of Labor  
4015 Wilson Blvd.  
Arlington, Virginia 22203  
Administrative Law Judge Gary Melick  
Federal Mine Safety & Health Review Commission  
5203 Leesburg Pike, 10th Floor  
Falls Church, Virginia 22041